

1                   **BEFORE THE POLLUTION CONTROL HEARINGS BOARD**  
2                   **STATE OF WASHINGTON**

3   **MICHAEL A. JOVICH d/b/a**                   )  
4   **MARINE VIEW CONSTRUCTION**            )  
5   **and STONEHILL DEVELOPMENT**           )  
6   **CORPORATION,**                            )

**PCHB NO. 92-211**

7                   **Appellants.**                   )

8                   **v.**                                    )

**FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER**

9   **PUGET SOUND AIR POLLUTION**            )  
10   **CONTROL AGENCY,**                        )

11                   **Respondent.**                   )  
12

13           This case involves Michael Jovich and Stonehill Development Corporation's appeal of  
14   Puget Sound Air Pollution Control Agency's (PSAPCA) issuance of Notice and Order of Civil  
15   Penalty No 7666 for \$10,000 for alleged violations of asbestos handling regulations

16           A formal hearing was held January 28, 1993, in Lacey, Washington, at the Pollution  
17   Control Hearings Board office Board members present were Chairman Harold S  
18   Zimmerman, presiding, Robert V Jensen and Annette S. McGee Appellants represented  
19   themselves. Respondent PSAPCA was represented by Attorney Keith D. McGoffin of  
20   McGoffin and McGoffin. Court Reporter Lenore Schatz of Gene Barker & Associates, Inc.,  
21   recorded the proceedings. Sworn testimony was heard Exhibits were admitted and examined  
22   Argument was made From the foregoing, the Board makes these.

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26   **FINAL FINDINGS OF FACT,**  
27   **CONCLUSIONS OF LAW & ORDER**  
    **PCHB No 92-211**



1  
2 **FINDINGS OF FACT**

3 **I**

4 The Puget Sound Air Pollution Control Agency (PSAPCA) is an activated air pollution  
5 control authority under the terms of the State of Washington Clean Air Act, responsible for  
6 monitoring and enforcing emission standards for hazardous air pollutants, including work  
7 practices for asbestos. PSAPCA has filed with the Board certified copies of its Regulation I,  
8 II, and III (including all amendments thereto).

9 The Board takes official notice of the Regulation (as amended).

10 **II**

11 On July 31, 1992 at 10:20 a.m. Joseph J. Eng, senior asbestos inspector for Puget  
12 Sound Air Pollution Control Agency (PSAPCA), responded to a citizen complaint involving  
13 the demolition of a house at 1016 North 28th Place, Renton, King County, Washington.

14 **III**

15 Inspector Eng observed a front-end loader and a pile of demolition debris containing  
16 wood, tar paper, glass, miscellaneous household refuse and furnishings, and an estimated 400  
17 square feet of damaged and undamaged suspected cement asbestos board (CAB) siding. The  
18 pile appeared to be dry and there was no visible water or water hose on site. The area was not  
19 sealed off with barrier tape. The weather was sunny and clear and temperature was  
20 approximately 75 degrees Fahrenheit.

21 **IV**

22 At 11:00 a.m., Michael A. Jovich, owner of Marne View construction, arrived at the  
23 site and contacted Inspector Eng, who asked Mr. Jovich who was responsible for the  
24 demolition of the house. Mr. Jovich advised Inspector Eng that he was hired by Bill Hegger  
25 of Stonehill Development Corporation to demolish the house and haul away the debris.



V

Mr. Jovich said he assumed the building was asbestos-free and demolition could proceed after a building inspector from the City of Renton had inspected the house and issued a demolition permit. Mr. Jovich was not aware of asbestos certification requirements, nor of any asbestos survey, and said he was not a certified asbestos contractor. His work has been mainly in construction since 1980, and he has been in demolition intermittently since 1989.

VI

Mr. Jovich showed Inspector Eng the demolition permit at the site, and had not started work on the site until he had read it. Mr. Jovich said he had not taken any seminars or courses on asbestos removal.

VII

A one inch by one inch square of siding was taken from the site by Inspector Eng to Hazcon, Inc. for laboratory testing. Barbara Cloyd, analyst, determined that the piece of material contained 15% chrysotile asbestos, and also contained cellulose, mineral filler, binder and paint, as 84% of material. Ms. Cloyd said it is not easily decided by visual inspection alone to determine if a material contains asbestos.

VIII

William R. Hegger, a licensed and bonded general contractor with Stonehill Development, a firm in residential construction, had applied for the building and demolition permit for an unoccupied 10 foot by 16 foot cabin or shed estimated to be 50 years old. It had serrated-type siding that had been painted many times.



IX

The permit, issued July 1, 1992, gave permission to "remove cabin/level lot/clean and clear debris" at 1016 North 28th Place. Field inspection was made by the governing municipality of Renton. There were no qualifying instructions or requirements, nor were any verbal instructions given, any cautions stated, or any indication that an asbestos survey should be done, or that anything at the site might require special attention, and therefore the project proceeded with issuance of the permit. There was likewise nothing in the permit which indicated that it authorized the removal of asbestos.

X

Between August 4, 1992 and August 11, numerous calls were made by Mr. Hegger to reach Mr. Eng to be advised of status of the project. Mr. Hegger went to the PSAPCA office and requested and paid for 3 volumes on asbestos removal, regulations for general contractors.

XI

Mr. Hegger hired Crown Delta Inc., an asbestos contractor, to abate and dispose of approximately 400 square feet of exterior siding of the shed. Estimated cost of the abatement project was \$7,000. Mr. Hegger requested a waiver by letter of the 10-day notification period to expedite the efforts to have the site cleared. It was approved.

XII

Crown Delta, Inc., started the project cleanup August 13, 1992, with completion on August 17, 1992. Crown Delta applied for, and gave the Notice of Intent to Remove or Encapsulate asbestos before they did any work.



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XIII

Crown Delta had certified asbestos workers and supervisors conduct the project Crown Delta wetted the materials until collected for disposal, Crown Delta contained the asbestos-containing material in a controlled area until transported to disposal sites and Crown Delta sealed the Asbestos-Containing Waste Material in leak-tight containers while adequately wet until deposited at a waste disposal site

XIV

The PSAPCA Notice and Order of Civil Penalty alleges that Jovich and Stonehill Development, pursuant to RCW 90 94, violated Regulation III on or about July 31, 1992, by failing to comply with the following sections of Article 4 of Reg III

- 4 03(a)(1) Failure to file with the Air Pollution Control Officer written Notice of Intent to Remove or Encapsulate Asbestos before any work on an asbestos project begins  
(Notice of Violation #10-000807)
- 4 04(a)(1) Causing or allowing work to be performed on an asbestos project by other than a certified asbestos worker(s) under the direct, on-site supervision of a certified asbestos supervisor  
(Notice of Violation #10-000808)
- 4 04(a)(4)(A) Failure to keep adequately wet until collected for disposal all asbestos-containing materials that have been removed or may have fallen off components during the course of an asbestos project  
(Notice of Violation #10-000809)
- 4 04(a)(4)(C) Failure to contain in a controlled area at all times until transported to a waste disposal site all asbestos-containing materials that have been removed or may have fallen off components during the course of an asbestos project (Notice of Violation #10-000809)
- 4 05(a)(1)(B) Failure to seal all asbestos-containing waste materials in leak-tight containers after wetting to ensure they remain adequately wet when deposited at a waste disposal site  
(Notice of Violation #10-000810)

A \$10,000 fine was assessed.



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XV

Under all the facts and circumstances we are persuaded that the appellants violated the first section (NOV #10-000807), but not the four additional citations. As soon as they realized they were in violation of regulations, they hired Crown Delta to take over the project. Crown Delta followed all proper regulations satisfactorily and therefore, did not violate the NOV's. 10-000808, 10-000809, 10-00810

XVI

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such. From these Findings of Fact, the Board issues these.

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the subject matter and the parties. Chapter 43.21B RCW. The case arises under PSAPCA Regulation III, Article 4, Section 4.3 implementing the Washington Clean Air Act, Chapter 70.94 RCW. PSAPCA has the burden of proof.

II

While the state agency of Labor and Industries, and the regional agencies, such as air pollution control agencies have the responsibility and authority to levy fines and penalties, and to enforce the pollution statutes, they also by the logic of serving local and state interests, and by reasonableness, are considered to be agents in the communication of information to local entities, such as cities. They thus become part of the process of not only issuing building or demolition permits, but also of helping citizens and contractors to know what they should be looking for in projects, and to use the simple technique of asking whether the parties have looked into such important aspects as possible asbestos on the site. When cities are making



1 physical inspections of the sites, they can point to requirements that would result in responses  
2 at an earlier stage rather than after violations and fines have been issued.

### 3 III

4 Based on the inspection and tests, Notices of Violation Nos 10-000807, 10-000808,  
5 10-000809, 10-000810 were issued and the Notice and Order of Civil Penalty No 7666 was  
6 issued on October 30, 1992

7 The appellants filed their appeal in a timely manner.

### 8 IV

9 Regulation III, Article 4, Section 4 provides for liability on a strict basis; negligence  
10 need not be found. This strict liability standard supports the goal of preventing harm, because  
11 asbestos is a hazardous material

12 Any diligence undertaken by the appellants is weighed against the amount of the fine,  
13 rather than negating basic liability.

### 14 V

15 We conclude PSAPCA has proved violation of Regulation III, Article 4, Section  
16 4.04(a)(4), 4.04(a)(4)(C), 4.05(a)(1)(B), but because each of these requirements was promptly  
17 handled satisfactorily by Crown Delta, hired by the appellants, at a cost of approximately  
18 \$7,000, that the appellants showed due diligence in correcting their oversights

### 19 VI

20 We conclude that Regulation III, Article 4, Section 4.03(a)(1), was violated when  
21 neither Jovich nor Hegger had filed a notice of intent to remove or encapsulate asbestos on an  
22 asbestos project because they had assumed incorrectly that their City of Renton permit issued  
23 by that municipality, gave them permission to "level and remove the shed" on the Stonehill  
24 property



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VII

The purpose of civil penalties is to promote future compliance with the law, both by these parties and the public at large. The reasonableness of penalties is based upon several factors, including the scope of the violation and appellants' conduct.

VIII

We conclude further the appellants' lack of prior violations of PSAPCA regulations, and their subsequent efforts to (1) obtain information about asbestos; (2) to obtain services of a certified asbestos removal company, (3) to seek a waiver of the notice requirement to proceed more quickly; and (4) to contract for the work of this company (Crown Delta) at a cost of approximately \$7,000, that some reduction of penalty is merited.

IX

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. From the foregoing, the Board issues this



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**ORDER**

The Notice and Order of Civil Penalty for violations of Regulation III, Article 4, Section 4 03(a)(1), Section 4 04(a)(4)(A), 4 04(a)(4)(C) and 4 05(a)(1)(B), are AFFIRMED

The penalty of \$10,000 is AFFIRMED, with \$7,000 suspended on condition that the appellants do not violate air pollution laws for two years from the date of this order

DONE this 16th day of March, 1993

**POLLUTION CONTROL HEARINGS BOARD**

  
HAROLD S. ZIMMERMAN, Presiding

  
ANNETTE S. MCGEE, Member

  
ROBERT V. JENSEN, Attorney Member

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